

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND**
Southern Division

IN RE US FERTILITY, LLC

DATA BREACH CASES

This Document Related To: All Actions

Master File No. 8:21-cv-299

**DECLARATION OF DAVID M. BERGER IN SUPPORT OF PRELIMINARY
APPROVAL OF SETTLEMENT AGREEMENT AS AMENDED**

I, David M. Berger, declare as follows:

1. I am a member in good standing of the California State Bar admitted to practice *pro hac vice* in this Court. I am a Partner in the law firm of Gibbs Law Group LLP, and Interim Co-Lead Class Counsel in this litigation. I have personal knowledge of the facts and matters stated herein, and could and would competently testify thereto if called upon to do so.

2. I submit this declaration in further support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement and for Certification of Settlement Class, Dkt. No. 104, and specifically in support of preliminary approval of the Settlement Agreement as amended by the September 2023 Amendment to the Settlement that is attached hereto as Exhibit A.

3. After Plaintiffs moved for preliminary settlement approval, this Court issued an Order seeking an explanation as to how the Common Fund would be adequate to compensate Class Members and as to the priorities of distribution for the various categories of monetary benefits to be paid out from the Common Fund. Dkt. No. 107.

4. In preparing the requested explanation, Interim Class Counsel realized that paragraphs 63 and 64 of the Settlement Agreement were inconsistent and that paragraph 63 did not reflect the intent of the Parties.

5. In response, the Parties agreed to amend the Settlement Agreement to delete paragraph 63 without making any other changes, as reflected in Exhibit A.

6. The Parties believe that the September 2023 Amendment should fully address this Court's concern as to the priorities of distribution, and will provide a further response regarding adequacy of compensation shortly.

7. The documents and exhibits filed with and in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement and for Certification of Settlement Class and the exhibits to the original Settlement Agreement are unaffected by this Amendment.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 22nd day of September at Oakland, California.

/s/ David M. Berger

David M. Berger